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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/000,362	12/04/2001	Gerard Auvray	Q67282	9785

23373 7590 02/02/2010
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EXAMINER

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ART UNIT	PAPER NUMBER
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2618

NOTIFICATION DATE	DELIVERY MODE
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02/02/2010

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GERARD AUVRAY and JEAN CHARPENTIER

Appeal 2009-003777
Application 10/000,362
Technology Center 2600

Decided: January 29, 2010

Before JOHN C. MARTIN, JOSEPH F. RUGGIERO, and THOMAS S.
HAHN, *Administrative Patent Judges*.

RUGGIERO, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Final Rejection of claims 1-14, which are all of the pending claims. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Rather than reiterate the arguments of Appellants and the Examiner, reference is made to the Brief (filed May 6, 2008), the Answer (mailed August 20, 2008), and the Reply Brief (filed October 20, 2008) for the respective details. Only those arguments actually made by Appellants have been considered in this decision. Arguments which Appellants could have made but chose not to make in the Briefs have not been considered and are deemed to be waived (*see* 37 C.F.R. § 41.37(c)(1)(vii) (2008)).

Appellants' Invention

Appellants' invention relates to providing mobile telephone service on board a vehicle in which a mobile telephone is connected to a public land mobile network via a satellite. At least one transport connection is set up between the mobile telephone and the public land mobile network before a call request is received. The transport connection is used for a call as soon as the request to set up a call is received. (*See generally* Spec. 2:31-3:10).

Claim 1 is illustrative of the invention and reads as follows:

1. A system for providing a mobile telephone service on board a vehicle, said system being connected to a public land mobile network via a satellite and including means for setting up at least one transport connection between said vehicle and said public land mobile network before receiving a call request and for then using said transport connection for a call as soon as a request to set up a call is received.

The Examiner's Rejections

The Examiner relies on the following prior art references to show unpatentability:

Horrer	US 6,321,084 B1	Nov. 20, 2001 (filed Nov. 30, 1998)
Lidbetter	EP 1 079 547 A1	Feb. 28, 2001

Claims 1-3, 5-7, and 9-14 stand rejected under 35 U.S.C. § 102(a) as being anticipated by Lidbetter.

Claims 4 and 8 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Lidbetter in view of Horrер.

ISSUE

The pivotal issue before us is whether Appellants have demonstrated that the Examiner erred in finding that Lidbetter discloses the setting up of a transport connection between a vehicle and a public land mobile network. The issue turns on whether the Examiner erred in interpreting the claimed transport connection as corresponding to the signaling/control channel established by the satellite tracking link (3-6-13) of Lidbetter.

FINDINGS OF FACT

The record supports the following relevant findings of fact (FF) by a preponderance of the evidence:

1. Lidbetter discloses (Fig. 1, col. 1, ll. 3-5) a mobile telephone communication system connected to a public land mobile network 4 via a satellite 6 and which provides mobile telephone service on board a vehicle such as a ship 1.
2. Lidbetter further discloses (col. 2, ll. 24-45) the establishment of a tracking radio link between a moveable base transceiver system located

on the ship 1 and the cellular radio and the fixed earth cellular radio switching system 4 on shore.

3. Lidbetter also discloses (col. 3, ll. 1-23) that the tracking radio link is a satellite link 3-6-13 which helps the ship remain in contact with the fixed earth station throughout the ship's voyage.

4. The satellite link 3-6-13 is disclosed by Lidbetter (col. 4, ll. 41-44) as providing a "signalling channel (supervisory control – management channel)."

5. Lidbetter also discloses (col. 3, ll. 19-21) that the satellite tracking link can be shut down during "a quiet time such as early in the morning."

PRINCIPLES OF LAW

1. ANTICIPATION

It is axiomatic that anticipation of a claim under § 102 can be found if the prior art reference discloses every element of the claim. *See In re King*, 801 F.2d 1324, 1326 (Fed. Cir. 1986) and *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1457 (Fed. Cir. 1984).

In rejecting claims under 35 U.S.C. § 102, "[a] single prior art reference that discloses, either expressly or inherently, each limitation of a claim invalidates that claim by anticipation." *Perricone v. Medicis Pharmaceutical Corp.*, 432 F.3d 1368, 1375-76 (Fed. Cir. 2005) (citing *Minn. Mining & Mfg. Co. v. Johnson & Johnson Orthopaedics, Inc.*, 976 F.2d 1559, 1565 (Fed. Cir. 1992)). "Anticipation of a patent claim requires

a finding that the claim at issue ‘reads on’ a prior art reference.” *Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1346 (Fed Cir. 1999) (“In other words, if granting patent protection on the disputed claim would allow the patentee to exclude the public from practicing the prior art, then that claim is anticipated, regardless of whether it also covers subject matter not in the prior art.”) (internal citations omitted).

2. OBVIOUSNESS

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988). In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966). “[T]he examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability.” *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). Furthermore,

“there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness” [H]owever, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.

KSR Int’l, Co. v. Teleflex Inc., 550 U.S. 398, 418 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

ANALYSIS

35 U.S.C. § 102(a) REJECTION

Claims 1 and 5

Appellants' arguments focus on the contention that, in contrast to the invention set forth in independent claims 1 and 5, Lidbetter does not disclose the establishment of a transport connection between a vehicle and a public land mobile network *before* a call is requested, and then using the transport connection for the call as soon as the call request is received. According to Appellants (App. Br. 9-13; Reply Br. 8-12), Lidbetter, while disclosing a satellite tracking communication between a base transceiver site (BTS) on a ship and a fixed earth station, which Appellants agree is arguably a continuous connection, has no disclosure that such a connection does not have to be "set up" so that it can be immediately used as soon as a call request is received.

We find that Appellants' arguments are not commensurate with the scope of the language of claims 1 and 5 and, accordingly, are not persuasive of any error in the Examiner's stated position (Ans. 3, 4, 8, and 9). To whatever extent Appellants may be correct that, when a call request is received in Lidbetter, further call connection set-up procedures are required since a call connection has not already been set-up, such a factual situation is not precluded by the claim language. In other words, the claims do not require that a *call* connection be set-up before a call request is received as argued by Appellants, but, rather, only that a connection (termed a "transport" connection) *for a call* be set up before a call request is received.

With the above discussion in mind, we agree with the Examiner that the claimed terminology "transport" connection can broadly, but reasonably,

be interpreted as corresponding to the signaling/control channel established in Lidbetter by the satellite tracking link (3-6-13) between the mobile station 12 on the ship 1 and the fixed earth station 3. Appellants do not dispute (App. Br. 11; Reply Br. 10) the Examiner's finding (Ans. 8) that Lidbetter's existing signaling/control channel is used to set up a call as soon as a request for a call is received. Accordingly, we find no error in the Examiner's conclusion (*id.*) that since the existing signalling control channel in Lidbetter is used to set up a call, it is therefore used "for a call" as soon as a call request is received as claimed.

We further find to be unpersuasive Appellants' argument that the claim term "transport channel" cannot be read on Lidbetter's signaling/control channel (App. Br. Reply Br. 11) and the related argument (App. Br. 10; Reply Br. 9-10) that directs attention to Lidbetter's disclosure (col. 4, ll. 41-42) which suggests that a channel must be selected from available multiple voice channels to provide a call connection. According to Appellants, this disclosure provides support for their contention that further procedures are required in Lidbetter to set up a call connection after a call request is received. We find, however, that regardless of what additional procedures may be required to provide a call connection in Lidbetter after a call request is received, this does not change the fact that Lidbetter's signaling/control channel connection, which Appellants agree is used to set up a call, can be reasonably interpreted as being a "transport" connection that is used "for a call" as claimed (albeit for setting up a call on a voice channel). Claim 1 does not specify that the recited transport connection is used *to carry* the call.

In view of the above discussion, since Appellants have not demonstrated that the Examiner erred in finding that all of the claimed limitations are present in the disclosure of Lidbetter, the Examiner's 35 U.S.C. § 102(a) rejection of independent claims 1 and 5 is sustained.

Claims 2, 6, 13, and 14

We also sustain the Examiner's anticipation rejection, based on Lidbetter, of dependent claims 2, 6, 13, and 14, which are directed to a standby state feature of the transport connection. We find no error in the Examiner's finding (Ans. 4, 9, and 10) that the existing signaling/control channel in Lidbetter, which is used to set up a call once a call request is received, is in a *standby* state, and thus uses substantially no resources, until a user who wishes to make a call starts the dialing process and the call set up procedure begins.

Claims 3 and 7

The Examiner's 35 U.S.C. § 102(a) rejection of dependent claims 3 and 7, based on Lidbetter, is also sustained. Appellants (App. Br. 13; Reply Br. 12) contend that Lidbetter merely discloses that the signaling/control channel satellite link is reactivated when interference conditions subside, e.g., when the ship leaves the shore, not in accordance with a time delay as claimed.

We do not find Appellants' arguments convincing of any error in the Examiner's position (Ans. 5 and 11). While Appellants' arguments focus on

Lidbetter's teaching (col. 3, ll. 18-19) of satellite link reactivation after a reduction of interference with shore based stations, Lidbetter also suggests (FF 5) a deactivation of the satellite link during a predetermined quiet time, e.g., early morning hours. We find that an ordinarily skilled artisan would have recognized and appreciated that Lidbetter's satellite link would be reactivated when the predetermined quiet time period expires, i.e., in accordance with a time delay (defined by the beginning and end of the quiet time period) as claimed.

Claims 9-12

The Examiner's anticipation rejection of dependent claims 9-12 is also sustained. In addressing the requirements of dependent claims 9-12, the Examiner again refers (Ans. 5, 6, and 9) to the signaling/control channel established by the satellite link 3-6-13 in Lidbetter. Appellants' arguments (App. Br. 11-12; Reply Br. 10-11) reiterate their previous contention that, in contrast to the requirements of the rejected claims, the signaling/control channel satellite link of Lidbetter is not a transport connection which is set up before a call request is received and can be used to provide a call connection without a further selection process.

We refer to our previous discussion, however, in which we noted that the language of the rejected claims does not require that the claimed transport connection provide a *call connection* before a call request is received but, rather, only that such transport connection be used *for a call*, such as for setting up a call on another channel. Accordingly, Appellants' arguments are not persuasive of any error in the Examiner's stated position.

We agree with the Examiner's conclusion that, regardless of what further procedures may be needed to set up and provide an actual *call connection* over the signaling/control channel in Lidbetter, such signaling control channel is a continuous existing available satellite link, set up before a call request is received, which can be used *for a call* without any further selection process, as claimed.

35 U.S.C. § 103(a) REJECTION

The Examiner's obviousness rejection of dependent claims 4 and 8 based on the combination of Lidbetter and Horrер is sustained as well. We find no error in the Examiner's application (Ans. 7) of the aircraft vehicle communication teachings of Horrер to the mobile telephone communication system disclosed by Lidbetter. Appellants' arguments (App. Br. 13) rely on the arguments asserted previously against independent claims 1 and 5, which arguments we have found to be unpersuasive for all of the previously discussed reasons.

CONCLUSION

Based on the findings of facts and analysis above, we conclude that Appellants have not shown that the Examiner erred in rejecting claims 1-3, 5-7 and 9-14 for anticipation under 35 U.S.C. § 102(a), nor in rejecting claims 4 and 8 for obviousness under 35 U.S.C. § 103(a).

DECISION

The Examiner's decision rejecting claims 1-3, 5-7 and 9-14 under 35 U.S.C. § 102(a) and claims 4 and 8 under 35 U.S.C. § 103(a) is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED

gvw

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